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6 William Edelen, Burton Fohrman and Wrongful Death Heirs of Monte Kirven

7 UNITED STATES BANKRUPTCY COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 In re

10 PG&E CORPORATION and  
11 PACIFIC GAS AND ELECTRIC  
12 COMPANY,

13 Debtors.

14 ☐ Affects PG&E Corporation

15 ☐ Affects Pacific Gas and Electric Company

16 ☒ Affects both Debtors

17 \*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM)

) Bankruptcy Case  
) No. 19-30088 (DM)  
) Chapter 11  
) (Lead Case)  
) (Jointly Administered)

) **JOINDER IN MOTION OF OFFICIAL  
) COMMITTEE OF TORT CLAIMANTS  
) FOR RELIEF FROM AUTOMATIC  
) STAY TO PERMIT STATE COURT  
) JURY TRIAL OF 2017 TUBBS  
) WILDFIRE CLAIMS  
) (Docket Nos. 2842-2851)**

) Date: July 24, 2019

) Time: 9:30 a.m.

) Place: United States Bankruptcy Court  
) Courtroom 17, 16th Floor  
) San Francisco, CA 94102

19 **I. INTRODUCTION**

20 Fire Victim Claimants William Edelen, Burton Fohrman and heirs of decedent Monte Kirven  
21 (Kathleen Groppe, Ken Kirven and Brian Kirven) represent three of the eleven claims from the 2017  
22 Tubbs Fire for which the Official Committee of Tort Claimants (the "TCC") has made an Amended  
23 Motion for Relief From Automatic Stay, hereinafter referred to as the "TCC Motion," asking the Court  
24 to allow eleven Tubbs Fire claims to proceed to trial against Debtors and to request that the  
25 Coordination Trial Judge in the California North Bay Fire Cases, JCCP 4955 (the "Coordinated  
26 Action"), order the eleven cases to trial with preference pursuant to California Code of Civil Procedure  
27 § 36. William Edelen, Burton Fohrman and heirs of decedent Monte Kirven (Kathleen Groppe, Ken  
28

1 Kirven and Brian Kirven) hereby join, as moving parties, the TCC Motion, provided that Exhibit A to  
2 the TCC Motion is corrected to name Burton Fohrman, who is in remission from bladder cancer  
3 (whereas it currently mistakenly reflects the name of Burton's wife "Raleigh Fohrman"). Lead  
4 Counsel appointed by the Court in JCCP 4955 also filed a joinder to the TCC Motion on behalf of all  
5 of these plaintiff victims as moving parties on the motion.

6 Fire Victim Claimants William Edelen, Burton Fohrman and heirs of decedent Monte Kirven  
7 are represented by the firm of Abbey, Weitzenberg, Warren & Emery, PC, in JCCP 4955 and in the  
8 Chapter 11 proceeding.

9 Fire Victim Claimants Roxanne Edelen, The William L. Edelen and Roxanne G. Edelen Trust  
10 Agreement Dated June 22, 2011, Raleigh Fohrman, Jeremy Olsan, Ann DuBay, Jacob Olsan, The  
11 Fohrman Family Trust Dated February 3, 1976, The Jeremy L. Olsan and Ann M. DuBay Trust Dated  
12 November 29, 2011, and the Estate of Monte Kirven are indivisible parties of record in the Coordinated  
13 Action and in this pending Chapter 11 proceeding. They are also represented by the firms of Abbey,  
14 Weitzenberg, Warren & Emery, PC, in each of those matters. They are not among the specific victims  
15 identified in the TCC Motion.

16 For the reasons set forth below, William Edelen, Roxanne Edelen, The William L. Edelen and  
17 Roxanne G. Edelen Trust Agreement Dated June 22, 2011, Burton Fohrman, Raleigh Fohrman, The  
18 Fohrman Family Trust Dated February 3, 1976, Jeremy Olsan, Ann DuBay, Jacob Olsan, The Jeremy  
19 L. Olsan and Ann M. DuBay Trust Dated November 29, 2011, Kathleen Groppe, Ken Kirven, Brian  
20 Kirven, and the Estate of Monte Kirven hereby join, as moving parties, in the TCC's Amended Motion  
21 and respectfully request that this Court grant the relief from automatic stay as requested in that motion.

## 22 **II. JOINDER OF WILLIAM EDELEN AND BURTON FOHRMAN**

23 Fire Victim Claimants William Edelen and Burton Fohrman hereby join, as moving parties,  
24 the TCC's Amended Motion for relief from the automatic stay to allow them to: (a) file a motion in  
25 the Coordinated Action for trial preference pursuant to California Code of Civil Procedure § 36 based  
26 on their age and health conditions; and (b) proceed to a jury trial in the California Superior Court on  
27 their claims against Debtors arising out of the Tubbs Fire.

1 The TCC Motion sets forth the reasons why this Court should lift the automatic stay. William  
2 Edelen and Burton Fohrman qualify for mandatory trial preference in the Coordinated Action under  
3 California Code of Civil Procedure § 36(a) that provides:

4 “(a) A party to a civil action who is over 70 years of age may petition the court for a  
5 preference, which the court shall grant if the court makes both of the following findings:

6 “(1) The party has a substantial interest in the action as a whole.

7 “(2) The health of the party is such that a preference is necessary to prevent  
8 prejudicing the party's interest in the litigation.”

9 As more fully set forth in the TCC Motion, Mr. Edelen is 73 years old and Mr. Fohrman is 79  
10 years old. Both have a substantial interest in the action as a whole, and both have health issues such  
11 that preference is necessary to prevent prejudicing their interests in the litigation.

12 “[A]s a matter of statutory construction section 36 must be deemed to be mandatory and  
13 absolute in its application if plaintiffs qualify under subdivision (a) thereof.” *Koch-Ash v. Superior*  
14 *Court*, 180 Cal.App.3d 689, 694, 225 Cal. Rptr. 657 (Ct. App. 1986).

15 “The clear intent of the Legislature is to safeguard litigants who qualify under subdivision (a)  
16 of section 36 against the acknowledged risk that death or incapacity might deprive them of the  
17 opportunity to have their case effectively tried and to obtain the appropriate recovery. [Citation.]”  
18 *Swaithes v. Superior Court*, 212 Cal.App.3d 1082, 1085, 261 Cal. Rptr. 41 (Ct. App. 1989). “Such a  
19 preference is not only necessary to assure a party's peace of mind that he or she will live to see a  
20 particular dispute brought to resolution but it can also have substantive consequences. The party's  
21 presence and ability to testify in person and/or assist counsel may be critical to success. In addition,  
22 the nature of the ultimate recovery can be adversely affected by a plaintiff's death prior to judgment.  
23 [Citation.]” *Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 532, 20 Cal. Rptr. 2d 182 (Ct. App.  
24 1993).

25 In sum, “Elderly litigants are clearly entitled to have their case effectively tried and to have the  
26 opportunity to enjoy during their own lifetime any benefits received.” *Swaithes, supra*, 212  
27 Cal.App.3d at p. 1086.  
28

1 **III. JOINDER OF ROXANNE EDELEN, THE WILLIAM L. EDELEN AND ROXANNE**  
2 **G. EDELEN TRUST AGREEMENT DATED JUNE 22, 2001, RALEIGH FOHRMAN,**  
3 **THE FOHRMAN FAMILY TRUST DATED FEBRUARY 3, 1976, JEREMY OLSAN,**  
4 **ANN DUBAY, JACOB OLSAN, AND THE JEREMY L. OLSAN AND ANN M.**  
5 **DUBAY TRUST DATED NOVEMBER 29, 2001**

6 Roxanne Edelen is the wife of William Edelen. Mr. and Mrs. Edelen are Trustees of The  
7 William L. Edelen and Roxanne G. Edelen Trust Agreement Dated June 22, 2001. Their intricately  
8 landscaped 2/3-acre property with a 3,200 square foot custom designed home located at 3927 Rincon  
9 Ridge Drive in Santa Rosa, California that was devastated by the Tubbs Fire, was held in The William  
10 L. Edelen and Roxanne G. Edelen Trust Agreement Dated June 22, 2001. The William L. Edelen and  
11 Roxanne G. Edelen Trust Agreement Dated June 22, 2001 is an indivisible party, as the property that  
12 was held in the trust was destroyed by the Tubbs Fire.

13 Burton Fohrman lived with his wife Raleigh Fohrman in a home located on 100 heavily  
14 wooded acres at 6200 Heights Road in Santa Rosa, California. Mr. Fohrman's step-son Jeremy Olsan,  
15 daughter-in-law Ann DuBay and grandson Jacob Olsan lived in a separate house on the same property,  
16 at 6210 Heights Road in Santa Rosa, California. Both homes, as well as thousands of feet of fencing,  
17 hundreds of trees, and native vegetation, were devastated by the Tubbs Fire. Mr. Fohrman and his  
18 family were forced to flee their property while it was in flames at 12:05 a.m. on October 9, 2017. The  
19 entire family lost their homes, personal property, and have claims for, *inter alia*, mental anguish and  
20 nuisance as a result of the Tubbs Fire.

21 Burton Fohrman and Raleigh Fohrman are Trustees of The Fohrman Family Trust Dated  
22 February 3, 1976. 51% of the interest in the real property located at 6200-6210 Heights Road in Santa  
23 Rosa, California, is held in The Fohrman Family Trust Dated February 3, 1976. Jeremy Olsan and  
24 Ann DuBay are Trustees of The Jeremy L. Olsan and Ann M. DuBay Trust Dated November 29, 2001.  
25 49% of the interest in the real property located at 6200-6210 Heights Road in Santa Rosa, California,  
26 is held in The Jeremy L. Olsan and Ann M. DuBay Trust Dated November 29, 2001. The Fohrman  
27 Family Trust Dated February 3, 1976 and The Jeremy L. Olsan and Ann M. DuBay Trust Dated  
28

1 November 29, 2001 are indivisible parties, as the property held in the trusts was destroyed by the  
2 Tubbs Fire.

3 Along with William Edelen and Burton Fohrman, Fire Victim Claimants Roxanne Edelen, The  
4 William L. Edelen and Roxanne G. Edelen Trust Agreement Dated June 22, 2011, Raleigh Fohrman,  
5 The Fohrman Family Trust Dated February 3, 1976, Jeremy Olsan, Ann DuBay, Jacob Olsan, and The  
6 Jeremy L. Olsan and Ann M. DuBay Trust Dated November 29, 2011 hereby join, as moving parties,  
7 in the TCC's Amended Motion for relief from automatic stay.

8 Raleigh Fohrman is over 70 years old and also suffers from debilitating health issues but has  
9 not sought preference directly. Roxanne Edelen, Jeremy Olsan, Ann DuBay and Jacob Olsan are not  
10 over 70 years old and do not suffer from debilitating health issues. However, all of the above  
11 Claimants are indispensable parties under California Code of Civil Procedure § 389 whose joinder in  
12 their family's preference trial would be compulsory should the Coordination Trial Court grant the  
13 anticipated preference motion brought by William Edelen, Burton Fohrman, and nine others.

14 California Code of Civil Procedure § 389(a) provides:

15 “(a) A person who is subject to service of process and whose joinder will not deprive  
16 the court of jurisdiction over the subject matter of the action shall be joined as a party  
17 in the action if (1) in his absence complete relief cannot be accorded among those  
18 already parties or (2) he claims an interest relating to the subject of the action and is so  
19 situated that the disposition of the action in his absence may (i) as a practical matter  
20 impair or impede his ability to protect that interest or (ii) leave any of the persons  
21 already parties subject to a substantial risk of incurring double, multiple, or otherwise  
22 inconsistent obligations by reason of his claimed interest. If he has not been so joined,  
23 the court shall order that he be made a party.”

24 Msrs. Edelen and Fohrman both have substantial interests relating to the subject of the  
25 proposed preference trial as joint owners of real and personal property and, in the case of Burton  
26 Fohrman and his family, substantially similar nuisance and zone of danger claims as well as parallel  
27 claims for negligent infliction of emotional distress. Failure to allow them to join in the preference  
28 motion will both impair and impede those interests and may subject Debtors to a substantial risk of  
inconsistent obligations.

The discretionary joinder of parties with related claims in a preference action is specifically  
permitted by California Code of Civil Procedure § 36(e) that provides: “Notwithstanding any other

1 provision of law, the court may in its discretion grant a motion for preference that is supported by a  
2 showing that satisfies the court that the interests of justice will be served by granting this preference.”

3 **IV. JOINDER OF THE ESTATE OF MONTE KIRVEN, AND KATHLEEN GROPPÉ,**  
4 **KEN KIRVEN AND BRIAN KIRVEN AS WRONGFUL DEATH HEIRS OF MONTE**  
5 **KIRVEN**

6 Fire Victim Claimants Kathleen Groppe, Ken Kirven and Brian Kirven are wrongful death  
7 heirs of Monte Kirven and hereby seek relief from the automatic stay, along with the Estate of Monte  
8 Kirven and the preference claimants identified herein. Kathleen Groppe, Ken Kirven, Brian Kirven  
9 and the Estate of Monte Kirven hereby join, as moving parties, the TCC’s Amended Motion for relief  
10 from automatic stay.

11 Decedent Monte Kirven was a healthy and active 81 year old man who owned a 1,600 square  
12 foot home with a separate 500 square foot workshop on 3.9 acres where he resided at 5375 Linda Lane  
13 in Santa Rosa, California. The house was filled with rare artifacts from around the world, as Mr.  
14 Kirven was an esteemed biologist and environmental conservationist who actively saved falcons from  
15 extinction. The Tubbs Fire destroyed Mr. Kirven’s home, property and possessions, and took Mr.  
16 Kirven’s life, leaving only his chimney and fireplace standing. Pathology and autopsy services were  
17 only able to recover some crumbling portions of charred bone fragments among the rubble for burial.  
18 Mr. Kirven is survived by his three adult children, Kathleen Groppe, Ken Kirven and Brian Kirven,  
19 who were very close to Mr. Kirven and adored him.

20 The wrongful death heirs of decedent Monte Kirven (Kathleen Groppe, Ken Kirven and Brian  
21 Kirven) have substantial interests relating to the subject of the proposed preference trial under the  
22 California Code of Civil Procedure § 36(e), which provides: “Notwithstanding any other provision of  
23 law, the court may in its discretion grant a motion for preference that is supported by a showing that  
24 satisfies the court that the interests of justice will be served by granting this preference.” The interest  
25 of justice will be served by granting preference to the wrongful death heirs of Monte Kirven, as the  
26 decedent’s heirs have already waited nearly two years for justice and recovery of their father’s estate  
27 and their significant and irreplaceable losses.



1 The discretionary joinder of parties with related claims in a preference action is specifically  
2 permitted by California Code of Civil Procedure § 36(e). Failure to allow them to join in the  
3 preference motion will both impair and impede those interests and may subject Debtors to a substantial  
4 risk of inconsistent obligations.

5 **V. CONCLUSION**

6 For all of the foregoing reasons, William Edelen, Roxanne Edelen, The William L. Edelen and  
7 Roxanne G. Edelen Trust Agreement Dated June 22, 2011, Burton Fohrman, Raleigh Fohrman, The  
8 Fohrman Family Trust Dated February 3, 1976, Jeremy Olsan, Ann DuBay, Jacob Olsan, The Jeremy  
9 L. Olsan and Ann M. DuBay Trust Dated November 29, 2011, the heirs of decedent Monte Kirven  
10 (Kathleen Groppe, Ken Kirven and Brian Kirven), and the Estate of Monte Kirven each respectfully  
11 request that this Court grant the motion for relief from the automatic stay to allow them to: (a) file a  
12 motion for trial preference pursuant to California Code of Civil Procedure § 36 in the San Francisco  
13 Superior Court; and (b) proceed to a jury trial in San Francisco County Superior Court on their claims  
14 arising out of the 2017 Tubbs Fire.

15  
16 DATED: July 11, 2019

Respectfully submitted,

17  
18 **ABBEY, WEITZENBERG, WARREN & EMERY, PC**

19  
20 By: 

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